

Remarks:

Claims 3-4 and 7-31 remain for consideration in this application with claims 12, 19, 26 and 31 being in independent format. Applicant respectfully asserts that in view of the amendments and remarks herein, the rejections of the Office Action dated November 3, 2004 are traversed or should be withdrawn.

In the Action, all claims were rejected under 35 U.S.C. § 112, second paragraph for indefiniteness. Claim 1 has been canceled and replaced with claim 31 and the unclear language has been deleted or clarified. Claim 2 was canceled. Claim 12 includes three distinct steps, measuring, correlating, and predicting; therefore, the rejection of this claim should be overcome. Claims 15-18 and 22-25 have been amended to recite “in comparison to a negative control which must have an optical density of 0.1 or less at 660 nm.” Finally, claims 19 and 26 have been amended to clarify the claimed steps. In view of the amendments of the claims, Applicant asserts that each of these rejections has been overcome or is rendered moot.

Claims 1,4-11, 12-14, and 26-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 00/26673 to Scheffel et al. (Scheffel). Each of these rejected claims requires the comparison or correlation of the optical density of the fluid sample with optical densities from individuals that are chronically infected with HCV and/or from individuals that have cleared the HCV infection but still test positive for HCV antibodies in an HCV antibody-based assay. The optical densities in Scheffel are not correlated in this manner but are instead correlated with the concentration of antibodies. Accordingly, the correlating or comparison step in each claim differs from Scheffel. It cannot be said that Scheffel teaches or suggests such a correlation or comparison as the only teaching of such a step is in the present application. Because the prior art has to teach

or suggest all of the claim limitations, the prima facie case of obviousness has been overcome by the amended claims and applicant asserts that the rejection has been overcome.

Finally, Applicant would like to thank the Examiner and the SPE for this application for the time and courtesy extended during the personal interview which took place on December 8, 2004. Applicant believes that this amendment fully complies with the discussion that took place during that interview. Of course, if any questions should remain, the Examiner is encouraged to contact the undersigned at 1-800-445-3460.

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 19-0522.

In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited.

Respectfully submitted,

By 
Tracey S. Truitt, Reg. No. 43,205
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
816/474-9050

ATTORNEYS FOR APPLICANT